

**MARGULIES WIND, PA**  
**Harborside Financial Center**  
**Plaza 10, 3 Second Street, Suite 1201**  
**Jersey City, New Jersey 07311-3988**  
**(201) 333-0400 (201) 333-1110/fax**  
**e-mail:fec@mwhlawfirm.com**  
**Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

**VIRTUAL STUDIOS, INC.,**

**Plaintiff,**

**vs.**

**CIVIL ACTION NO:**

**COURISTAN, INC.**

**Defendant.**

**COMPLAINT**

By way of complaint against defendant Couristan, Inc., plaintiff Virtual Studios, Inc. states as follows:

**JURISDICTION**

1. The First Count of the within complaint is brought under the Federal Copyright Act of 1976, as amended, 17 U.S.C.A. §§101, *et seq.* This Court has jurisdiction pursuant to Section 1338(a) of the Judicial Code (28 U.S.C.A. §1338(a)). The remaining count of the complaint constitutes a related claim as to which the Court has pendant jurisdiction under Section 1338(b) as well as diversity jurisdiction under Section 1332.

VENUE

2. Venue is appropriate under the provisions of 28 U.S.C. 1400(a).

FACTS COMMON TO ALL COUNTS

3. Plaintiff, Virtual Studios, Inc., ("Virtual") provides a variety of services and products within the graphic arts industry. Among those services are digital photography scanning, design and illustration, digital offset printing, presentation graphics, image setting, digital color and printers proofs, mounting and laminating. Virtual is a corporation of the State of Tennessee, with its main place of business at 693 Varnell Road, Tunnel Hill, Georgia 30755.

4. Approximately 13 years ago Virtual developed a unique software program enabling it to offer carpet and rug manufacturers digital room scenes created by Virtual on which to display their products in sales, advertising and marketing materials.

5. Virtual's unique proprietary program allowed it to digitally photograph flooring products and manipulate the images of those products into previously developed room scenes, out of many created by Virtual.

6. In approximately 2002 Virtual and defendant Couristan Industries, Inc. ("Couristan") began doing business together. Through the new technology developed by Virtual, Couristan was able to display its rugs and carpeting in room scenes created by Virtual. Couristan is a New York corporation with its main place of business at Two Executive Drive, Fort Lee, New Jersey 07024.

7. Under the terms of the agreement between the parties, Couristan would select certain room scenes and would provide Virtual with samples of its products which would then be photographed and Virtual would digitally manipulate the images of those products onto the images of its room

scenes which could then be used by Couristan for purposes of advertising, sales and marketing and could be placed on various web sites utilized by Couristan.

8. The terms of the agreement between the parties concerning Couristan's use of the images produced by Virtual include, *inter alia*, the "Terms and Conditions" contained on the reverse side of all invoices submitted in a regular course of business by Virtual to Couristan.

9. The subject invoices contained, *inter alia*, the following language:

Virtual Studios will provide its Client with the unlimited use of all photographs for a period of 1 year from the day of completion and payment of services as stated below

\* \* \* \* \*

Client may not assign or transfer this agreement or any rights granted hereunder...No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. This agreement incorporates by reference Article 2 of the Uniform Commercial Code, and the Copyright Act of 1976, as amended.

\* \* \* \*

Virtual Studios copyright notice "@ (Your First Publication) *Virtual Studios*" must accompany each editorial use as an adjacent credit line.

\* \* \* \*

Virtual Studios reserves the right to pursue unauthorized users of any Virtual Studios room scene image. If you violate our intellectual property you may be liable for actual damages, loss of income, and profits you derived from the use of this image or clip, and, where appropriate, the cost of collection and/or statutory damages up to \$150,000 (U.S.D.) per image.

10. Defendant Couristan was actually aware of the foregoing language in the invoices submitted to it by defendant Virtual at all times relevant hereto and actually assented to the cited terms and conditions.

11. As an additional term of the agreement between the parties respecting the use by Couristan of Virtual's images, Couristan agreed that Virtual had the sole and exclusive right to manipulate the room scene images by imposing thereon various images of rugs and carpeting products manufactured by Couristan.

12. In 2007, Couristan discontinued doing business with Virtual.

13. After Couristan terminated its business with Virtual, the latter discovered that Couristan had continued to use the images, whose use had been limited by the agreement between the parties to one year, for periods exceeding one year.

14. With respect to the images that Couristan used and continues to use beyond the one year limitation of its agreement with Virtual, Couristan failed and refused to compensate Virtual beyond the payment of a one year fee with respect to each image.

15. In addition, Virtual discovered after 2009 that Couristan had, on its own initiative, without the participation of Virtual and without Virtual's consent, undertaken to superimpose images of its own on to the room scene images Virtual had provided Couristan with.

**COUNT I**

**COPYRIGHT INFRINGEMENT**

16. Plaintiff repeats and restates each and every allegation of Paragraphs 1 through 15 as though fully set forth herein.

17. In 2007 and 2008, plaintiff Virtual complied in all respects with the United States Copyright Act of 1976 and all other laws governing copyright by applying for copyright registration and making the required deposit for each and every one of the room scene images provided defendant Couristan for its limited use. The United States Copyright Office accordingly issued copyright

certificates for each of the subject room scenes with the latest effective date of the registration certificates of February 14, 2008.

18. At all times defendant Couristan had actual or constructive notice of Virtual's copyright in and to the subject room scene images.

19. The original room scenes provided to defendant Couristan included the following:

1. 10397StairCFull
2. 10458 Home\_OfficeC
3. 10458 Home\_OfficeC
4. 10458DRE
5. 10458LRC
6. 10458LRC
7. 10458LRC
8. 10458LRC
9. 10458LRC
10. 10458LRC
11. 10508LRC
12. 10508LRC
13. 10508LRC
14. 10508LRC
15. 10458LRE
16. 10458LRE
17. 10458LRE
18. 10458LRE
19. 10458LRE
20. 10461BR45
21. 10461BR45
22. 10461BR45
23. 10461BR45
24. 10461BR45
25. 10461BR45
26. 10461BR45
27. 10461LR24
28. 11622LRA
29. 11622LRA
30. 11622LRA

- 31. 11622LRA
- 32. 11622 MiscD
- 33. 11622 MiscD
- 34. 11622 MiscD
- 35. 11622 MiscD
- 36. 11622 MiscD
- 37. 11622 MiscD
- 38. 11622 MiscD
- 39. 11775Entr6
- 40. 11842DR2
- 41. 12631\_FR1
- 42. 12787\_FR4
- 43. 12787\_FR4
- 44. 12787\_FR5
- 45. 12787\_FR5
- 46. 12787\_FR5
- 47. 12787\_FR5
- 48. 12787\_FR5
- 49. 12787\_FR5
- 50. 12787\_FR5
- 51. 12787\_LR4
- 52. 12787Foyer4
- 53. 12787Foyer4
- 54. 12787Foyer4
- 55. 12787FR3
- 56. 12787FR3
- 57. 12787LR10
- 58. 12787LR11
- 59. 12787LR5
- 60. 12787LR7
- 61. 12787Misc2
- 62. 12787Misc3

63. 12787Misc6  
64. 12787Misc6  
65. 12787Misc6  
  
66. 12787Misc8  
  
67. 12891FR4  
  
68. 13033MBR2  
69. 13033MBR2  
  
70. 13364Stair1  
71. 13364Stair1  
  
72. 13364Stair3  
73. 13364Stair3  
74. 13364Stair3  
75. 13364Stair3  
76. 13364Stair3  
  
77. 13413\_Misc2  
78. 13413\_Misc2  
  
79. 13413Staircase1  
  
80. 13459\_SC1  
81. 13459\_SC1  
  
82. 13459Staircase2  
  
83. 13692BR1D  
84. 13692BR1D  
  
85. 13692DR2  
  
86. 13692Foyer2  
  
87. 13692FR1D  
  
88. 13692LR2  
89. 13692LR2  
90. 13692LR2  
91. 13692LR2  
92. 13692LR2  
93. 13692LR2  
94. 13692LR2  
95. 13692LR2

96. 13692LR2  
97. 13692LR2  
  
98. 13692Stair6  
99. 13692Stair6  
  
100. 14312DR2  
  
101. 14312FR1  
102. 14312FR1  
103. 14312FR1  
104. 14312FR1  
105. 14312FR1  
  
106. 14312FR3  
107. 14312FR3  
  
108. 14312FR4  
109. 14312FR4  
  
110. 14312LR1  
111. 14312LR1  
112. 14312LR1  
  
113. 14312Misc1  
114. 14312Misc1  
115. 14312Misc1  
116. 14312Misc1  
117. 14312Misc1  
118. 14312Misc1  
119. 14312Misc1  
120. 14312Misc1  
121. 14312Misc1  
122. 14312Misc1  
  
123. 14499FR5  
124. 14499FR5  
125. 14499FR5  
126. 14499FR5  
  
127. 15106\_DR2  
128. 15106\_DR2  
  
129. 15106BR12  
  
130. 15106DR3

131. 15106Foyer3  
132. 15106Foyer3

133. 15106FR10

134. 15642LR2

135. 15744LR1  
136. 15744LR1

137. 16697\_FR\_5  
138. 16697\_FR\_5

139. 16697LR4

140. 16697LR7  
141. 16697LR7

142. 16840\_FR2  
143. 16840\_FR2

144. 8708A

20. The customized room images created by plaintiff in which plaintiff digitally installed images of defendant's products at defendant's request were the following:

1. 10397StairCFull\_TajMahal
2. 10458\_Home\_Ofc\_Westford
3. 10458\_HOV\_Antelope
4. 10458DRE\_Garden7320\_0001
5. 10458LRC\_Prairie3
6. 10458LRC\_Prairie2c
7. 10458LRC\_Prairie2
8. 10458LRC\_Prairie2b
9. 10458LRC\_Prairie4b
10. 10458LRC\_Prairie4
11. 10458LRC\_Stonington
12. 10458LRC\_Putty
13. 10458LRC\_EnchantedGarden
14. 10458LRC\_Almond Toast
15. 10458\_LRE\_EGSMCamel
16. 10458RE\_EGSMC\_Camel

17. 10458LRE\_EGSMC\_Camel\_Blue
18. 10458LRE\_EGSMC\_Green
19. 10458LRE\_8784\_Ivory
  
20. 10461BR45\_AdelaiddTrlls\_IvryA
21. 10461BR45\_AdelaiddTrlls\_BlkA
22. 10461BR45\_AdelaiddTrlls\_Gld
23. 10461BR45\_AdelaiddTrlls\_RedA
24. 10461BR45\_AdelaiddTrlls\_Red
25. 10461BR45\_AdelaiddTrlls\_Red2
26. 10461BR45\_AdelaiddTrlls\_Blk
  
27. 10461LR24\_TajMahal
  
28. 11622LRA\_SilverAspen
29. 11622LRA\_FloralMajestic
30. 11622LRA\_2590\_0796AtmnSpin
31. 11622LRA\_2590\_0796AtmnSpl
  
32. 11622MiscD\_0361\_0671\_Blue
  
33. 11622MiscD\_Windemere
34. 11622MiscD\_Windemere
35. 11622MiscD\_Windemere
36. 11622MiscD\_Windemere
37. 11622MiscD\_Windemere
38. 11622MiscD\_Windemere
  
39. 11775Entr6\_2500\_2518\_PrlBl
  
40. 11842DR2\_GreenMist
  
41. 12631\_FR1\_2344\_0004prgssns
  
42. Arbor\_Vine\_Harlequin
43. 12787\_FR4\_2327\_0646\_LtMaple
  
44. 12787\_FR5\_BlackSands
45. 12787\_FR5\_BlackSands\_Wide
46. 12787\_FR5\_BlackSands\_Widep
47. 12787\_FR5\_BlackSands\_Sandsp
48. 12787\_FR5\_BlackSands\_Medp
49. 12787\_FR5\_BlackSands\_Med
50. 12787\_FR5\_Desert\_Sand
  
51. Nordic\_Harlequin

- 52. 12787Foyer4\_Manhattan\_Class
- 53. 12787Foyer4\_Manhattan\_Sm
- 54. 12787Fyr4\_5300\_079\_MssGm
  
- 55. 12787\_FR3\_20150080
- 56. 12787\_FR3\_2150\_400
  
- 57. 12787LR10\_amsterdam560BL
  
- 58. 12787LR11\_PalazzoSeafnBlue
  
- 59. 12787LR5\_Cheetah
  
- 60. 12787LR7\_8760\_0004
  
- 61. 12787Misc1\_CB79\_0003Lprd
  
- 62. 12787Misc3\_Aligator
  
- 63. 12787Misc6\_White\_Tiger
- 64. 12787Misc6\_White\_Tiger\_Sm
- 65. 12787Misc6\_CB79\_0005Zebra
  
- 66. 12787Misc823900128
  
- 67. 12891FR4\_52600004
  
- 68. 13033MBR2\_RC0007Sandstone
- 69. 13033MBR2\_RC0007Sandstone2
  
- 70. 13364\_Stair\_1\_Everest
- 71. 13364\_Stair\_1\_3721\_4876
  
- 72. 13364Stair3\_SavannahBurg
- 73. 13364Stair3\_SavannahCream
- 74. 13364Stair3\_SavannahOnyxL
- 75. 13364Stair3\_SavannahOlive
- 76. 13364Stair3\_SavannahOnyxD
  
- 77. 13413\_Misc2\_SpringBlossoms
- 78. 13413\_Misc2\_SpringBlossoms\_Sm
  
  
- 79. 13413Misc1\_0105\_0002Grn
- 80. 13413\_Misc2\_BantryGm2
  
- 81. 13413Staircase1\_Roccoco

82. 13459\_SC1-23002\_003A\_S\_Sage
83. 13459\_Strcs1\_0691\_Camel
84. 13459Staircase2\_Provence
85. 13692BR1D\_2020\_0033Cocont
86. 13692BR1D\_2020\_0033Coc4x5
87. 13692DR2\_Hanover\_Red
88. 13692Foyer2\_0621\_2596C\_G
89. 13692FR1D\_1935/5426Natural
90. 13692LR2\_Newcastle4ct
91. 13692LR2\_NewcastleGm
92. 13692LR2\_NewcastleBeige
93. 13692LR2\_NewcastleRed
94. 13692LR2\_NewcastleGold
95. 13692LR2\_DevonshireBlack
96. 13692LR2\_DevonshireBge
97. 13692LR2\_DevonshireGold
98. 13692LR2\_DevonshireGld
99. 13692LR2\_DevonshireWine
100. 13692Stair6\_VintageStar
101. 13692Stair6\_3223-0296
102. 1431DR2\_Royal Medlln\_Ivory
103. 14312\_FR1\_ArborVine7329\_0003
104. 14312\_FR1\_Vintage\_7323\_0002Ivy
105. 14312FR18132\_2608\_Persian\_Red
106. 14312FR1\_Persian\_Hazelnut
107. 14312FR1\_8132-2607\_Hazelnut
108. 14312FR3\_0621\_2596
109. 14312FR3\_8132\_2606
110. 14312FR4\_2415\_0070\_Wheat
111. 14312FR4\_2415\_0070\_Wheat4x5
112. 14312LR1\_roccoco\_burgundy
113. 14312LR1\_roccoco\_black
114. 14312LR1\_Rococ\_Corinthian
115. 14312Misc1\_Newcastle4ct

- 116. 14312Misc1\_NewcastleGrn
- 117. 14312Misc1\_NewcastleBeige
- 118. 14312Misc1\_NewcastleRed
- 119. 14312Misc1\_NewcastleGold
- 120. 14312Misc1\_DevonshireBlack
- 121. 14312Misc1\_DevonshireGrn
- 122. 14312Misc1\_DevonshireGold
- 123. 14312Misc1\_DevonshireRed
- 124. 14312Misc1\_Devonshire4ct
  
- 125. 14499FR5\_23850121
- 126. 14499FR54540\_0172\_Straw
- 127. 14499FR54540\_0172\_Straw2
- 128. 14499FR5\_2500\_2518\_PrlBlk
  
- 129. 15106\_DR2\_2288\_0644Manilla
- 130. 15106\_DR2\_8934\_0645D
  
- 131. 15106BR12\_Tramor\_Red
  
- 132. 15106DR3\_2380\_Mirada\_0157
  
- 133. 15106Foyer3\_PersianGrdns5820
- 134. 15106Foyer3\_PersianGrdns\_Beige
  
- 135. 15106FR10\_55400005JayBlue
  
- 136. 15642LR2\_SydneyGold
  
- 137. 15744LR1\_1719\_0002\_Red
- 138. 15744LR1\_UROMOCHAI\_Black
  
- 139. 16697FR5\_Damask
- 140. 16697FR5\_Damaskcharisma
  
- 141. 16697LR4\_Chanterelle
  
- 142. 16697LR7\_1157\_7941\_TaosLodge
- 143. 16697LR7\_1431607TaosLodge
  
- 144. 16840\_FR2\_Wood\_Grey
- 145. 16840\_FR2\_CloudMushroom
  
- 146. 8708A\_palmyra\_7315\_0004

21. Notwithstanding Couristan's notice and knowledge of Virtual's rights and, contrary to its agreement with Virtual and without Virtual's permission or assent, Couristan has continued to copy, use, disseminate, and digitally manipulate and alter Virtual's copyrighted images.
22. Virtual notified defendant Couristan that it has infringed and is infringing Virtual's copyrights. Notwithstanding such notice, Couristan has continued and will continue to infringe Virtual's copyrights.
23. Couristan's acts of infringement have been, and continue to be willful.
24. The unauthorized and infringing use by Couristan of Virtual's copyrighted materials will unless enjoined, cause irreparable harm, damage and injury to Virtual. In addition, defendant Couristan has unlawfully and wrongfully derived and will continue to derive income and profits from its infringing acts.

**WHEREFORE**, plaintiff requests judgment against defendant for:

- a. A permanent injunction enjoining defendant and its agents, servants and employees from infringing in any manner plaintiff's copyrights in the subject room scene images and from copying, disseminating, altering or otherwise disposing of any copies thereof following a final decision in this action;

- b. An accounting for payment to plaintiff of all of the following sums:

All gains, profits and advantages derived by defendant as a result of its infringement of plaintiff's copyrights, statutory damages or such damages as the Court shall deem proper and within the provisions of the copyright statutes.

- c. The delivery by defendant, its agents, employees and all holding with, through or under it or anyone acting on its behalf to be impounded of all articles alleged to infringe

the copyrights of plaintiff in the subject room scene images;

- d. Delivery by defendant, its agents, employees and all holding with, through or under or anyone acting on its behalf for destruction following a final decision in this action, of all infringing copies concluding all infringing derivative images, digital files, magnetic tapes and other means for making infringing copies;
- e. Reasonable attorney's fees, interest, and costs of suit; and
- f. Such other and further relief as the Court deems equitable and just.

**COUNT II**

**Breach of Contract**

- 25. Plaintiff repeats and restates each and every allegation of Paragraphs 1 through 24 as though fully stated herein.
- 26. The continued use by defendant of plaintiff Virtual's products beyond the terms of use agreed upon between the parties constitutes a breach of contract by Couristan.
- 27. Plaintiff Virtual has been and will continue to be damaged by the breach by defendant of the contract between the parties.
- 28. Plaintiff has complied in all respects with its obligations under the contract between the parties.

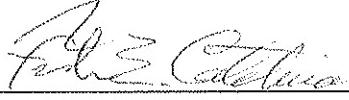
**WHEREFORE**, plaintiff Virtual demands judgment against defendant Couristan as follows:

- a. Awarding damages in such amount as the Court shall deem appropriate for breach of contract;
- b. Awarding plaintiff interest and costs of suit;
- c. Awarding plaintiff reasonable attorney's fees; and

- d. Awarding such other and further relief as the Court deems equitable and just.

MARGULIES WIND, PA  
Attorneys for Defendants/Counterclaimants

Dated: January 24, 2011

BY:   
FRANK E. CATALINA